

House Bill 925

By: Representatives Ralston of the 7th, Tumlin of the 38th, and Forster of the 3rd

A BILL TO BE ENTITLED
AN ACT

To amend Title 51 of the Official Code of Georgia Annotated, relating to torts, so as to create provisions relating to asbestos claims and successor corporations; to provide for legislative findings; to provide definitions; to provide that limitations of liabilities apply to a corporation that is a successor and became a successor corporation before January 1, 1972; to provide for exceptions to the limitations; to provide for other exceptions; to provide for methods by which to establish fair market value of total gross assets; to provide for the fair market value of total gross assets at the time of a merger or consolidation to increase annually; to provide for adjustments; to provide a methodology by which the fair market value of the assets is increased; to require that the courts liberally construe the chapter; to provide an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by inserting at the end thereof a new Chapter 14 to read as follows:

"CHAPTER 14

51-14-1.

The General Assembly finds that the number of asbestos related claims has increased significantly in recent years and threatens the continued viability of a number of uniquely situated companies that have not ever manufactured, sold, or distributed asbestos or asbestos products and are liable only as successor corporations. This liability has created an overpowering public necessity to provide an immediate, remedial, legislative solution. The General Assembly intends that the cumulative recovery by all asbestos claimants from innocent successors be limited, and intends to simply change the form of asbestos

claimants' remedies without impairing their substantive rights, and finds that there are no alternative means to meet this public necessity. The General Assembly further finds the public interest as a whole is best served by providing relief to these innocent successors so that they may remain viable and continue to contribute to this state.

51-14-2.

As used in this chapter, the term:

(1) 'Asbestos claim' means any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to the health effects of exposure to asbestos, including, but not limited to:

(A) Any claim for:

(i) Personal injury or death;

(ii) Mental or emotional injury;

(iii) Risk of disease or other injury; or

(iv) The costs of medical monitoring or surveillance, to the extent such claims are recognized under state law;

(B) Any claim made by or on behalf of an exposed person or based on that exposed person's exposure to asbestos, including a representative, spouse, parent, child, or other relative of the exposed person; and

(C) Any claim for damage or loss caused by the installation, presence, or removal of asbestos.

(2) 'Corporation' means a corporation for profit, including a domestic corporation organized under the laws of this state, or a foreign corporation organized under laws other than the laws of this state.

(3) 'Successor' means a corporation that assumes or incurs, or has assumed or incurred, successor asbestos related liabilities.

(4) 'Successor asbestos related liabilities' means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, which are related in any way to asbestos claims and were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation, with or into another corporation, or which are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under Code Section 51-14-4, were or are paid or otherwise discharged, or

1 committed to be paid or otherwise discharged, by or on behalf of the corporation, or by
2 a successor of the corporation, or by or on behalf of a transferor, in connection with
3 settlements, judgments, or other discharges in this state or another jurisdiction.

4 (5) 'Transferor' means a corporation from which successor asbestos related liabilities are
5 or were assumed or incurred.

6 51-14-3.

7 (a) The limitations contained in Code Section 51-14-4 apply to a corporation that is a
8 successor and became a successor before January 1, 1972, or is any of that successor
9 corporation's successors.

10 (b) The limitations contained in Code Section 51-14-4 do not apply to:

11 (1) Workers' compensation laws administered by this state to provide benefits, funded
12 by a responsible employer or its insurance carrier, for occupational diseases or injuries
13 or for disability or death caused by occupational diseases or injuries or a comparable
14 workers' compensation law of another jurisdiction;

15 (2) Any claim against a corporation that does not constitute a successor asbestos related
16 liability;

17 (3) An insurance corporation; or

18 (4) Any obligations under the federal National Labor Relations Act or under any
19 collective bargaining agreement.

20 51-14-4.

21 (a) Except as further limited in subsection (b) of this Code section, the cumulative
22 successor asbestos related liabilities of a corporation are limited to the fair market value of
23 the total gross assets of the transferor determined as of the time of the merger or
24 consolidation. The corporation does not have any responsibility for successor asbestos
25 related liabilities in excess of this limitation.

26 (b) If the transferor had assumed or incurred successor asbestos related liabilities in
27 connection with a prior merger or consolidation with a prior transferor, the fair market
28 value of the total assets of the prior transferor, determined as of the time of the earlier
29 merger or consolidation, shall be substituted for the limitation set forth in subsection (a)
30 of this Code section for the purpose of determining the limitation of liability of a
31 corporation.

32 51-14-5.

1 (a) A corporation may establish the fair market value of total gross assets for the purpose
2 of the limitations under Code Section 51-14-4 through any method reasonable under the
3 circumstances, including:

4 (1) By reference to the going concern value of the assets or to the purchase price
5 attributable to or paid for the assets in an arm's length transaction; or

6 (2) In the absence of other readily available information from which fair market value
7 can be determined, by reference to the value of the assets recorded on a balance sheet.

8 (b) Total gross assets include intangible assets.

9 (c) Total gross assets include the aggregate coverage under any applicable liability
10 insurance that was issued to the transferor whose assets are being valued for purposes of
11 this Code section, which insurance has been collected or is collectible to cover successor
12 asbestos related liabilities except compensation for liabilities arising from workers'
13 exposure to asbestos solely during the course of their employment by the transferor. A
14 settlement of a dispute concerning the insurance coverage entered into by a transferor or
15 successor with the insurers of the transferor before July 1, 2005, shall be determinative of
16 the aggregate coverage of the liability insurance to be included in the calculation of the
17 transferor's total gross assets.

18 51-14-6.

19 (a) Except as provided in subsections (b), (c), and (d) of this Code section, the fair market
20 value of total gross assets at the time of a merger or consolidation shall increase annually
21 at a rate equal to the sum of:

22 (1) The prime rate as published by the Board of Governors of the Federal Reserve
23 System, as published in statistical release H. 15 or any publication that may supersede it,
24 for each calendar year since the merger or consolidation; and

25 (2) One percent.

26 (b) The rate provide in subsection (a) of this Code section shall not be compounded.

27 (c) The adjustment of fair market value of total gross assets shall continue as provided
28 under subsection (a) of this Code section until the date the adjusted value is first exceeded
29 by the cumulative amounts of successor asbestos related liabilities paid or committed to be
30 paid by or on behalf of the corporation or a predecessor, or by or on behalf of a transferor,
31 after the time of the merger or consolidation for which the fair market value of total gross
32 assets is determined.

33 (d) No adjustment of the fair market value of total gross assets shall be applied to any
34 liability insurance otherwise included in the definition of total gross assets by subsection
35 (c) of Code Section 51-14-5.

1 51-14-7.

2 The courts in this state shall apply, to the fullest extent permissible under the United States
3 Constitution, this state's substantive law, including the limitation under this chapter, to the
4 issue of successor asbestos related liabilities. This chapter shall be construed liberally to
5 accomplish its remedial purposes."

6 **SECTION 2.**

7 This Act shall become effective upon its approval by the Governor or upon its becoming law
8 without such approval and shall apply to any civil action asserting an asbestos claim in which
9 trial has not commenced as of the effective date.

10 **SECTION 3.**

11 All laws and parts of laws in conflict with this Act are repealed.